

This letter is a follow-up to previous letter ruling ST 03-0022-PLR. This letter explains the situs of a sale at retail. 86 Ill. Adm. Code 270.115. (This is a PLR.)

September 10, 2004

Dear Xxxxx:

This letter is in response to your letter dated May 20, 2004, and our subsequent conversations in which you have provided additional information regarding the PLR issued on August 27, 2003. The Department issues two types of letter rulings. Private Letter Rulings ('PLRs') are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ('GIL') is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

As you know, ABC requested a private letter ruling from the Illinois Department of Revenue ('the Department') on March 25, 2003 to obtain guidance in sourcing sales of tangible personal property to the proper local taxing jurisdictions. As indicated in the letter ruling request to the Department, ABC is a full-line supplier of PRODUCT. ABC operates branch offices in CITIES. # of those branch offices are located in Illinois.

Our client maintains a large facility CITY, Illinois. This facility contains administrative offices for the company, including the company's tax department, as well as credit and billing personnel. ABC and its predecessors have served the CITY market for years. The CITY location also contains extensive warehousing and inventory storage space, along with a fabrication facility.

Our client makes over-the-counter sales of its products at its various facilities. Our client seeks confirmation that in the case of over-the-counter sales of its products, the tax rate

it should charge is the tax rate in effect in the jurisdiction in which the over-the-counter sale occurs. This confirmation is consistent with the Department's ruling that 'your company's over-the-counter sales are situated at the location of the branch office for ROT purposes.'

As was noted in our original letter ruling request, our client makes sales in response to telephone orders. Telephone calls may be received by ABC on a number of different phone lines. When a telephone call is received from a potential customer, the call is routed to the appropriate, and available, product specialist. As noted in the original letter ruling request, this person obtains the necessary information about the order and inputs that information into ABC's computer system. This information is reviewed by a credit manager and then is reviewed to verify that the order meets the company's pricing and profit standards. If the order meets these standards, ABC accepts the order and releases the order for shipment. If the order does not meet these standards, the billing manager adjusts the price and accepts the order. This review takes place at ABC's CITY facility. Upon acceptance, the order is filled and shipped from the ABC location closest to the customer at which the requested product is in stock.

In addition to orders received by telephone, some sales are initiated through an outside salesperson. In these instances, instead of making a telephone call to initiate a purchase, the customer gives the purchase order information to a salesperson employed by ABC. Upon receipt of the purchase information, the salesperson phones in the order to ABC and the order is processed in the same manner as a telephone order.

In the private letter ruling, the Department ruled, 'if you have a sales person who makes a sale, the location of the sales person will determine the situs of the transaction.' We would request a clarification of this ruling. As noted above, when an order is received over the telephone, the person that answers the call takes the order information and the order is routed to CITY, Illinois for review and approval. Similarly, when a salesperson in the field takes order information from a customer, that order information is routed to CITY, Illinois for review and approval. We respectfully request a clarification of your earlier ruling to state that in such circumstances, the rate of tax in effect in CITY is the tax rate that should be charged.

Finally, the Department ruled 'in the situation the other situation you describe where a phone order is routed to the CITY distribution center and the order is filled from that center, enough of the selling activity takes place at the distribution center in the CITY to fix the situs of the ROT transaction there.' As we noted above, orders routed to CITY, Illinois for review and approval are not always filled from inventory stocked at the CITY facility. Rather, it is ABC's policy to fill orders from the closest facility to the customer at which ABC has the product ordered by the customer. We respectfully request that you clarify that filling customer orders in this fashion will not change the sourcing of these sales to CITY, Illinois.

Please feel free to contact me at your convenience, if I may provide you with any additional information.

Additional information you have provided indicates that a credit manager, who both reviews all customer and order information and performs a credit review, is located in CITY, Illinois. In addition,

if the company declines to approve the order sent to the CITY location, a billing manager adjusts that order as to price and accepts it. This billing manager is also located in CITY.

In regards to your first ruling request, please be advised that when an over-the-counter sale takes place, the tax rate in effect at the jurisdiction in which the over-the-counter sale is made is applicable to that sale.

You have described a situation in which orders are phoned by either a customer or salesperson to a company product specialist located at any of several company branch office locations. The product specialist inputs the order into the company's computer system. A credit manager located at the company's CITY office reviews the customer information that has been input and confirms that the order meets the company's pricing and profit standards. If the credit manager approves the order, it is accepted and the property is released for shipment. If not approved, a billing manager adjusts the price and accepts the order.

Section 270.115 of the Department's regulations sets forth the test that is used to determine what local tax is applicable to any given sale. It states that "enough of the selling activity must occur within the home rule municipality to justify concluding that the seller is engaged in business within the home rule municipality with respect to that sale." Based on the specific information you have provided regarding the purchase and acceptance procedures you have outlined immediately above, it is our opinion that sufficient selling activity occurs at the CITY location to trigger the imposition of local taxes. As a result, the local tax in effect for CITY is applicable to these sales. Our earlier letter erroneously assumed that the "distribution center" in CITY was the location of the inventory from which all orders were filled. We understand that this is not the case. However, the fact that the purchase order may not be filled from an inventory at the CITY location does not change our conclusion. The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Jerilynn T. Gorden
Deputy General Counsel

JTG:msk